No. 14-770

In the Supreme Court of the United States

BANK MARKAZI, AKA THE CENTRAL BANK OF IRAN,
PETITIONER

v.

DEBORAH PETERSON, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTION PRESENTED

The Iran Threat Reduction and Syria Human Rights Act of 2012, 22 U.S.C. 8701 *et seq.*, identifies certain "financial assets" in which the Central Bank of Iran has a security entitlement and that were the subject of post-judgment enforcement proceedings in the United States District Court for the Southern District of New York at the time the provision was enacted. 22 U.S.C. 8772(b). The statute makes those assets "subject to execution or attachment in aid of execution in order to satisfy" certain terrorism-related judgments against the Islamic State of Iran, provided that the assets are (1) "held in the United States for a foreign securities intermediary doing business in the United States," (2) blocked assets, and (3) "equal in value to a financial asset" held abroad by the financial securities intermediary on behalf of the Central Bank of Iran. 22 U.S.C. 8772(a)(1). The question presented is:

Whether 22 U.S.C. 8772 violates the separation of powers.

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This brief is submitted in response to the Court's order inviting the Solicitor General to express the views of the United States. In the view of the United States, the petition for a writ of certiorari should be denied.

STATEMENT

1. a. The Foreign Sovereign Immunities Act of 1976 (FSIA), 28 U.S.C. 1330, 1441(d), 1602 *et seq.*, defines the scope of immunity enjoyed by a foreign state from suit. The statute provides that a "foreign state" and its agencies and instrumentalities are "immune from the jurisdiction" of federal and state courts except as provided by certain international agreements and by the exceptions to immunity set forth in Sections 1605-1607. 28 U.S.C. 1604; see 28 U.S.C. 1605-1607. The statute's exceptions largely "codify the

restrictive theory of sovereign immunity," under which a foreign state is immune from suits involving its sovereign or public acts but not from suits arising from its commercial activities. *Samantar* v. *Yousuf*, 560 U.S. 305, 313 (2010); see, *e.g.*, 28 U.S.C. 1605(a)(2), (3), and (b).

One exception to foreign sovereign immunity, known as the "terrorism exception," applies to suits seeking money damages for "personal injury or death that was caused by an act of torture, extrajudicial killing, aircraft sabotage, [or] hostage taking," if the foreign state was designated "as a state sponsor of terrorism" by the Secretary of State "at the time the act occurred" or later "as a result of such act." 28 U.S.C. 1605(a)(7) (2000); see 28 U.S.C. 1605A (revising and recodifying the terrorism exception).

b. The FSIA also governs attachment and execution against the property of foreign states and their agencies and instrumentalities. 28 U.S.C. 1609-1611. Section 1609 establishes a general rule that "the property in the United States of a foreign state" is "immune from attachment arrest and execution," 28 U.S.C. 1609, with exceptions set out in Section 1610. As relevant here, Section 1610 provides that when the "judgment relates to a claim for which the foreign state is not immune under" the terrorism exception to jurisdictional immunity (28 U.S.C. 1605A), the judgment creditor may execute against the property of a foreign state if it is used for commercial activity, 28 U.S.C. 1610(a)(7), and the property of a foreign-state agency or instrumentality whether or not it is used for commercial activity, 28 U.S.C. 1610(b)(3).

The FSIA also identifies specific types of property that are immune from execution "[n]otwithstanding

the provisions of [S]ection 1610." 28 U.S.C. 1611(a). Under Section 1611(b)(1), the property "of a foreign central bank or monetary authority held for its own account" is immune from attachment and execution unless the bank "or its parent foreign government" has explicitly waived its immunity. 28 U.S.C. 1611(b)(1).

c. Victims of state-sponsored terrorism who have obtained judgments against foreign states under the FSIA's terrorism exception have often faced practical and legal difficulties in enforcing their judgments. Congress has enacted a number of statutes designed in part to facilitate enforcement of those judgments.

Enforcement of terrorism-related judgments takes place against the backdrop of the sanctions programs to which the property in the United States of state sponsors of terrorism typically is subject. See, *e.g.*, International Emergency Economic Powers Act (IEEPA), 50 U.S.C. 1701 *et seq.*; Trading with the Enemy Act (TWEA), 50 U.S.C. App. 5. Those programs authorize the President to "block" particular assets in the United States. Blocking broadly prohibits transactions concerning the subject property in the absence of Executive Branch authorization. See, *e.g.*, Exec. Order No. 13,224, § 1, 3 C.F.R. 786 (2002). In 2012, for instance, the President issued an Executive Order blocking all assets of Iran and its agencies and instrumentalities "that are in the United States," with some exceptions that are not relevant to this case. Exec. Order No. 13,599, 3 C.F.R. 215 (2013).

Congress has enacted several statutes designed to facilitate execution specifically against property that is subject to a blocking regime to satisfy terrorism-related judgments. In 1998, Congress authorized

execution against blocked foreign-state property on any judgment obtained under the terrorism exception "[n]otwithstanding any other provision of law, includeing" IEEPA, TWEA, and other sanctions programs. 28 U.S.C. 1610(f)(1)(A). Congress authorized the President to "waive" that authorization "in the interest of national security," 28 U.S.C. 1610 note, and the President exercised that authority. Memorandum on Blocked Property of Terrorist-List States, 34 Weekly Comp. Pres. Doc. 2088 (Oct. 21, 1998).

Next, in Section 201 of the Terrorism Risk Insurance Act of 2002 (TRIA), Pub. L. No. 107-297, 116 Stat. 2337, Congress authorized plaintiffs with judgments obtained under the terrorism exception to execute against "the blocked assets of [a] terrorist party (including the blocked assets of any agency or instrumentality of that terrorist party)." § 201(a), 116 Stat. 2337; § 201(d)(4), 116 Stat. 2340. TRIA thus expanded the universe of property that can be attached to satisfy a terrorism-related judgment by providing that judgment creditors may attach the blocked assets of a juridically separate agency or instrumentality in order to satisfy a judgment against the foreign state itself. See *First Nat'l City Bank* v. *Banco Para El Comercio Exterior de Cuba*, 462 U.S. 611, 626-628 (1983) (ordinarily an instrumentality's assets may not be used to satisfy a claim against the state).

In 2008, Congress amended the FSIA to expand plaintiffs' ability to enforce a terrorism-related judgment against assets of a foreign state. As amended, Section 1610(g)(1) permits plaintiffs to attach the property of a foreign state agency or instrumentality to satisfy the judgment against the foreign state, regardless of whether the agency or instrumentality is juri-

dically separate from the state and whether the assets are blocked. See National Defense Authorization Act for Fiscal Year 2008, Pub. L. No. 110-181, § 1083(a), (b)(1)(A)(iii), and (b)(3)(D), 122 Stat. 338-341; 28 U.S.C. 1610(g)(1).

In 2012, while this case was pending, Congress again rendered additional blocked assets subject to attachment by enacting the Iran Threat Reduction and Syria Human Rights Act of 2012, 22 U.S.C. 8701 *et seq.* That statute provides that certain blocked assets—specifically, "the financial assets that are identified in and the subject of proceedings" in this case—are subject to attachment to satisfy judgments against Iran for terrorist acts if the court makes certain factual findings. 22 U.S.C. 8772(b); see pp. 7-9, *infra*.

2. a. Respondents are more than 1000 victims of terrorist attacks sponsored by Iran or the representatives and surviving family members of such victims. Pet. App. 52a-53a. Respondents are judgment creditors of Iran, having obtained "billions of dollars in judgments against Iran" under the FSIA's terrorism exception to foreign state immunity. *Id.* at 53a. Respondents registered their judgments in the United States District Court for the Southern District of New York, where they sought to execute their judgments on any property of Iran they could identify within the jurisdiction. *Id.* at 53a-54a; see 28 U.S.C. 1963.

Respondents proceeded against approximately $1.75 billion in bonds (the bond assets) held in a New York account at Citibank, N.A., on behalf of petitioner. Pet. 7; Pet. App. 2a. Petitioner "is the Central Bank of Iran, which is wholly owned by the Iranian government." *Ibid.* Petitioner has a "beneficial interest" in

the bond assets, which are held by Citibank, N.A., in an omnibus account for Clearstream Banking, S.A., a financial intermediary. *Ibid.* Clearstream, in turn, maintains the Citibank account in part for Banca UBAE S.p.A., an Italian bank, whose customer is in turn petitioner. *Ibid.*; see Pet. 7-8, 20.

In 2008, when some respondents learned of the existence of the bond assets, they obtained from the district court a writ of execution, which restrained the assets. Pet. App. 62a. At the outset of the litigation, the bonds had not yet matured, so the assets took the form of security entitlements.[1] Pet. 7-8 & n.1. Clearstream argued that respondents could not execute against the bond assets under New York state law. Pet. App. 62a. Ordinarily, in the absence of a governing federal statute, "[t]he procedure on execution * * * must accord with the procedure of the state where the court is located." Fed. R. Civ. P. 69(a)(1). Clearstream argued that the bond assets were not subject to execution under N.Y. U.C.C. Law § 8-112(c) (McKinney 2002), which provides that "[t]he interest of a debtor in a security entitlement may be reached by a creditor only by legal process upon the securities intermediary with whom the debtor's securities account is maintained." *Ibid.* Because Clearstream did not maintain an account in petitioner's name, the court agreed with Clearstream that the bond assets could not be attached under Section 8-112(c). Pet. App. 126a-127a.

In 2010, respondents filed amended complaints against petitioner, Clearstream, Citibank, and UBAE, seeking turnover of the assets. Pet. App. 3a; see *id.* at

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[1] During the proceedings, the bonds matured "so that Citibank then held the cash proceeds." Pet. 8 n.1.

62a-63a. Citibank filed an interpleader action, and the district court consolidated the various proceedings concerning the bond assets. *Id.* at 15a.

While the consolidated proceedings were pending, the President issued Executive Order 13,599, which blocked "[a]ll property and interests in property of the Government of Iran, including the Central Bank of Iran, that are in the United States." Exec. Order. 13,599, *supra*. The Executive Order explained that the blocking action was appropriate in light of "the deceptive practices of [petitioner] * * * to conceal transactions of sanctioned parties."[2] *Ibid.* The bond assets were among those blocked by the Executive Order. Once the bond assets were blocked, respondents sought summary judgment on their claim for execution under TRIA, which permits execution against "the blocked assets of any agency or instru-

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[2] Upon learning that Clearstream maintained securities on behalf of petitioner that were custodized and located in the United States, the Treasury Department's Office of Foreign Assets Control initiated an investigation into Clearstream for potentially exporting financial services from the United States to Iran in violation of the Iranian Transactions and Sanctions Regulations (ITSR), 31 C.F.R. Pt. 560. See *Clearstream Banking, S.A. Settles Potential Liability for Apparent Violations of Iranian Sanctions* 1 (Jan. 23, 2014), http://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20140123_clearstream.pdf. As a result of the "omnibus nature of Clearstream's account" and the chain of intermediaries through which petitioner controlled the assets, petitioner's "beneficial ownership interest in the * * * securities was not transparent" to the U.S. financial institutions and/or custodians that maintained the securities for Clearstream, and Clearstream was able to "export[] custody and related services from the United States to [petitioner] in apparent violation of the ITSR." *Ibid.* Clearstream paid approximately $152 million to settle its "potential civil liability." *Ibid.*

mentality of th[e] terrorist party" to satisfy a judgment under the FSIA's terrorism exception. TRIA § 201(a), 116 Stat. 2337; Pet. App. 3a. Petitioner argued (Pet. 9) that the bond assets were not subject to execution under TRIA because they were not petitioner's property under Section 8-112 of the New York U.C.C., and thus were not assets "of" an agency of a terrorist party under TRIA.

While that motion was pending, Congress enacted Section 8772 of the Iran Threat Reduction and Syria Human Rights Act of 2012. 22 U.S.C. 8772; Pet. App. 3a-4a. Section 8772(a)(1) provides that,

> notwithstanding any other provision of law * * * , and preempting any inconsistent provision of State law, a financial asset that is—
>
> (A) held in the United States for a foreign securities intermediary doing business in the United States;
>
> (B) a blocked asset (whether or not subsequently unblocked) that is property described in subsection (b); and
>
> (C) equal in value to a financial asset of Iran, including an asset of the central bank or monetary authority of the Government of Iran or any agency or instrumentality of that Government, that such foreign securities intermediary or a related intermediary holds abroad,
>
> shall be subject to execution or attachment in aid of execution in order to satisfy any judgment to the extent of any compensatory damages awarded against Iran [in terrorism-related cases].

22 U.S.C. 8772(a)(1). The statute requires the court, before permitting execution against such assets, to "determine whether Iran holds equitable title to, or the beneficial interest in, the assets," and also "that no other person possesses a constitutionally protected interest in the assets." 22 U.S.C. 8772(a)(2); see *ibid.* (authorizing execution only to the extent of Iran's interest in the property).

b. The district court granted partial summary judgment to respondents, holding that the bond assets were subject to turnover under Section 8772 and TRIA. Pet. App. 52a-124a. As required by Section 8772, the district court determined that "[o]n this record and as a matter of law," only petitioner had a beneficial interest in the bond assets. *Id.* at 111a-112a.

The district court rejected petitioner's contention that Section 8772 violated the separation-of-powers principles explicated in *United States* v. *Klein*, 80 U.S. (13 Wall.) 128 (1872), because it "dictated specific factual findings in connection with a specific litigation." Pet. App. 114a-115a. The court explained that Section 8772 established new legal standards without usurping the court's role of applying those standards to the facts at hand. *Id.* at 115a.

The district court also concluded that the bond assets were "assets of [a] terrorist party" subject to attachment under TRIA because petitioner had conceded that it was the sole beneficial owner of the assets. Pet. App. 97a-99a.

3. The court of appeals affirmed. Pet. App. 1a-12a. On appeal, petitioner "concede[d] that the statutory elements for turnover of the assets under [Section] 8772 have been satisfied." *Id.* at 2a. Petitioner argued, however, that Section 8772 conflicts with the

Treaty of Amity between the United States and Iran, see Treaty of Amity, Economic Relations, and Consular Rights, U.S.-Iran, Aug. 15, 1955, 8 U.S.T. 899, 1957 WL 52887 (Treaty of Amity), and violates the separation of powers. *Id.* at 2a.

The court of appeals first held that Section 8772 did not conflict with the Treaty of Amity's provisions requiring fair and equitable treatment of "nationals and companies" because Section 8772 is not discriminatory. Pet. App. 7a (citing Treaty of Amity arts. IV.1, V.1).

The court of appeals next rejected petitioner's separation-of-powers argument. Pet. App. 7a-10a. The court explained that, under *Klein*, *supra*, Congress usurps the courts' adjudicative role if it directs the outcome of a case under existing law. Pet. App. 8a. But, the court continued, Congress may constitutionally alter the law governing a pending case, even if doing so changes the outcome of the case. *Id.* at 8a-9a (discussing *Robertson* v. *Seattle Audubon Soc'y*, 503 U.S. 429 (1992)). The court concluded that Section 8772 "retroactively changes the law applicable in this case, a permissible exercise of legislative authority." *Id.* at 8a.

Having concluded that Section 8772 authorized turnover of the bond assets, the court of appeals declined to address petitioner's contention that the requirements for attachment under TRIA were not satisfied. Pet. App. 1a-2a.

DISCUSSION

Petitioner contends (Pet. 15-22) that Section 8772 violates the separation-of-powers principles set forth in *United States* v. *Klein*, 80 U.S. (13 Wall.) 128 (1872), because it dictates the outcome of a particular case.

The court of appeals correctly rejected that contention, and its decision does not conflict with any decision of this Court or any other court of appeals. Petitioner is also incorrect in contending (Pet. 25-31) that the court of appeals' decision has important international ramifications justifying review. The petition for a writ of certiorari should be denied.

I. THE COURT OF APPEALS' DECISION IS CORRECT

A. Section 8772 Is Constitutional Because It Amended The Governing Law Applicable To This Case Rather Than Directing A Particular Outcome

In *Klein* and subsequent decisions, this Court held that while Congress may alter the law governing a pending case, it may not usurp the Judiciary's role by directing a particular result in a pending case under existing law. The court of appeals correctly held that Section 8772 permissibly altered the law applicable to this case by changing the standards governing execution against the assets at issue and leaving application of those standards for judicial determination.

1. *Klein* arose out of efforts to recover property seized by Union military authorities during the Civil War. Under the Abandoned Property Collection Act, ch. 120, 12 Stat. 820, a person whose property had been seized by the military could recover its value in the Court of Claims upon a showing that, *inter alia*, the claimant "ha[d] never given any aid or comfort to the present rebellion." § 3, 12 Stat. 820. In *United States* v. *Padelford*, 76 U.S. (9 Wall.) 531, 542-543 (1870), this Court held that receipt of a Presidential pardon was conclusive proof of loyalty and entitled the recipient to return of his property. In response, Congress enacted a statute providing, *inter alia*, that

acceptance of a pardon without written protest or disclaimer must be treated by the courts as conclusive evidence of the claimant's disloyalty; and that the Court of Claims and this Court were required to dismiss for want of jurisdiction any pending claims for recovery of property based on a Presidential pardon. Act of July 12, 1870, ch. 251, 16 Stat. 235; see *Klein*, 80 U.S. (13 Wall.) at 132-134, 143-144.

This Court held that the legislation impermissibly "impair[ed] the effect of a pardon, and thus infring[ed] the constitutional power of the Executive." *Klein*, 80 U.S. (13 Wall.) at 147. In addition, the Court concluded that "Congress has inadvertently passed the limit which separates the legislative from the judicial power." *Ibid.* The legislation at issue "prescribe[d] a rule for the decision of a cause in a particular way" and could not be sustained "without allowing one party to the controversy to decide it in its own favor." *Id.* at 146.

The Court has elaborated on the meaning of *Klein* in subsequent decisions. In *Robertson* v. *Seattle Audubon Society*, 503 U.S. 429 (1992), the Court explained that *Klein* does not apply when Congress "amend[s] applicable law," *id.* at 441, by "replac[ing] the legal standards underlying" pending litigation, as opposed to directing the disposition of cases under existing law, *id.* at 437; see *Plaut* v. *Spendthrift Farm, Inc.*, 514 U.S. 211, 218 (1995) (Congress may "set[] out" new "substantive legal standards for the Judiciary to apply" consistent with *Klein.*). In *Robertson*, the Court upheld legislation that Congress had enacted "[i]n response to * * * ongoing litigation" challenging certain government timber-harvesting plans as inconsistent with the National Environmental Poli-

cy Act of 1969, 42 U.S.C. 4321 *et seq.*, and other environmental statutes. 503 U.S. at 433. The newly enacted legislation set forth certain substantive requirements that would apply to harvesting on the lands at issue in the litigation, and provided that compliance with those requirements "is adequate consideration for the purpose of meeting the statutory requirements that are the basis for" the pending litigation. *Id.* at 437 (citation omitted). This Court held that the legislation permissibly "replaced the legal standards underlying the two original challenges with" new standards, thus changing the law governing the case. *Id.* at 437, 438. The legislation did not unconstitutionally direct "findings or results under old law," the Court explained, and it "did not instruct the courts whether any particular timber sales would violate" the new standards or "direct any particular findings of fact or applications of law." *Id.* at 438-439.

2. The court of appeals correctly held that Section 8772 is not invalid under *Klein* because it "changes the law applicable to this case" by establishing new substantive standards for the courts to apply to the facts before them. Pet. App. 9a.

a. Section 8772 changes the applicable law in at least two respects: it preempts otherwise applicable state law that would prevent execution against a debtor's security entitlement to property and substitutes a different federal rule, and it eliminates any immunity from execution that petitioner might otherwise enjoy as the central bank of Iran.

First, as petitioner acknowledges (Pet. 10, 14), Section 8772 displaces state law that would ordinarily govern execution on a judgment obtained in federal court. See p. 6, *supra*; Fed. R. Civ. P. 69(a)(1) ("[t]he

procedure on execution * * * must accord with the procedure of the state where the court is located"). Under that state law, a creditor's interest in a debtor's security entitlement may be reached "only by legal process upon the securities intermediary with whom the debtor's securities account is maintained." N.Y. U.C.C. Law § 8-112(c) (McKinney 2002); see Pet. 5. Relying on that law, petitioner argued in the district court "that the security entitlements Citibank held for Clearstream were not [petitioner's] property under U.C.C. Article 8" and so were not subject to attachment. Pet. 9.

Section 8772, however, makes subject to attachment any financial asset in which Iran holds a beneficial interest and which is "held in the United States for a foreign securities intermediary doing business in the United States," if the asset is blocked and "equal in value to a financial asset of * * * the central bank [of Iran] * * * that such foreign securities intermediary or a related intermediary holds abroad." 22 U.S.C. 8772(a)(1), (a)(2)(A). Because Section 8772 expressly "preempt[s] any inconsistent provision of State law," *ibid.*, it replaces Section 8-112(c) of the New York U.C.C. as the "substantive law" governing the execution proceedings below. Pet. 5; see *Robertson*, 503 U.S. at 437 ("replac[ing]" the governing legal standards with new standards is consistent with *Klein*).

Second, Section 8772 amended existing law by superseding any immunity from execution Section 1611(b)(1) of the FSIA would have conferred on petitioner's assets by virtue of petitioner's status as the central bank of Iran. Section 1611(b)(1) provides that the property "of a foreign central bank or monetary

authority held for its own account" is generally immune from attachment and execution. 28 U.S.C. 1611(b)(1). In the district court, petitioner argued that even if the bond assets were deemed to be its property for purposes of execution, the assets would nevertheless be immune from attachment under Section 1611(b)(1). See Pet. 9; Pet. App. 102a-104a. Section 8772, however, expressly subjects to execution "asset[s] of the central bank or monetary authority of the Government of Iran." 22 U.S.C. 8772(a)(1)(C). It does so "notwithstanding any other provision of law, including any provision of law relating to sovereign immunity." 22 U.S.C. 8772(a)(1). As the district court correctly recognized, Section 8772 "sweeps away the FSIA provision setting forth a central bank immunity." Pet. App. 73a.

b. Section 8772 also does not require any particular findings or result. See *Plaut*, 514 U.S. at 218. The statute does not direct the courts to turn specified assets over to respondents. Cf. *Robertson*, 503 U.S. at 438-439. Instead, the statute provides that "the court shall determine" whether the financial assets at issue in this case meet the new standards Congress enacted. 22 U.S.C. 8772(a)(2).

Before authorizing execution, the district court made the findings required by Section 8772(a). In particular, as required by Section 8772(a)(2), the court determined that petitioner "holds equitable title to, or the beneficial interest in," the assets, and that no other person possesses an interest in the assets. 22 U.S.C. 8772(a)(2); see Pet. App. 109a (finding that "[n]o rational juror could find that any person or entity—other than [petitioner]—has a constitutional, beneficial or equitable interest" in the bond assets).

In addition, as the district court's opinions reflected, it was uncontested that respondents had satisfied Section 8772's other elements: (1) Clearstream is a foreign securities intermediary doing business in New York, 22 U.S.C. 8772(a)(1)(A); Pet. App. 57a, (2) the bond assets are blocked, 22 U.S.C. 8772(a)(1)(B); Pet. App. 63a-64a, (3) the assets at issue are held by Citibank for Clearstream, 22 U.S.C. 8772(a)(1)(A); Pet. App. 56a, 58a, and (4) the assets at issue are equivalent in value to assets held abroad by Clearstream and UBAE on behalf of petitioner, 22 U.S.C. 8772(a)(1)(C); Pet. App. 56a, 58a-60a. See generally Pet. App. 5a, 111a-113a.

B. Petitioner's Contrary Arguments Lack Merit

Petitioner contends (Pet. 19-22) that even if Section 8772 altered the governing law applicable to this case, the statute is nonetheless unconstitutional for two reasons: first, the required judicial findings concerned "collateral uncontested issues" and therefore did not reflect a "meaningful reservation of judicial authority," Pet. 20-21, and second, the statute is directed to a single case, Pet. 22. Petitioner is incorrect.

1. Petitioner argues (Pet. 19-22) that Section 8772 effectively directed the outcome in this case because the judicial findings contemplated by the provision were never in "serious question." Pet. 20. But this Court has never suggested that whether there is a "serious question" about how a statute applies to the facts before a court is the test for determining whether the statute invades the court's Article III functions. *Robertson* held that the legislation at issue in that case—which was enacted in response to pending litigation—was constitutional because it did not "direct any particular findings of fact" or "instruct the courts

whether any particular timber sales would violate" the new standards. 503 U.S. at 438-439. The Court did not examine whether compliance with the new standards presented a "serious question" or would require the court to resolve disputed factual issues. Rather, it viewed the fact that the statute did not "direct" particular findings, without more, as dispositive of the *Klein* question. Accord *Plaut*, 514 U.S. at 218 (It is sufficient that the statute "set[s] out substantive legal standards for the Judiciary to apply.").

2. Petitioner next argues (Pet. 22) that Section 8772 is unconstitutional because it purports to change the applicable law for purposes of a single pending case. As petitioner observes, the Court in *Robertson* declined to address the question whether "even a change in law, prospectively applied, would be unconstitutional if the change swept no more broadly, or little more broadly, than the range of applications at issue in the pending cases." 503 U.S. at 441. But both *Klein* and an earlier case, *Pennsylvania* v. *Wheeling & Belmont Bridge Co.*, 59 U.S. (18 How.) 421 (1856) (*Wheeling Bridge*), indicate that legislation designed to alter governing law in a single case does not offend separation-of-powers principles.

In *Wheeling Bridge*, the Court upheld a statute that declared a bridge to be a "lawful structure[]" after the Court had in an earlier case held it to be a nuisance and granted prospective relief. *Id.* at 429. The Court rejected the State's argument that the statute was unconstitutional because it "annul[led] the judgment of the court already rendered," *id.* at 431, explaining that the intervening statute altered the underlying law and made it "plain [that] the [injunctive] decree of the court cannot be enforced." *Id.* at

431-432. *Klein* reaffirmed *Wheeling Bridge*, explaining that the statute at issue in *Wheeling Bridge* was constitutional because it allowed the Court "to apply its ordinary rules to the new circumstances created by the act." *Klein*, 80 U.S. (13 Wall.) at 146-147. *Wheeling Bridge* and *Klein* thus indicate that Congress may change the governing law for one case alone. See *National Coal. to Save Our Mall* v. *Norton*, 269 F.3d 1092, 1097 (D.C. Cir. 2001) ("In view of * * * *Wheeling Bridge*, we see no reason why the specificity [of a statute] should suddenly become fatal."), cert. denied, 537 U.S. 813 (2002).

In any event, even if there might be contexts in which a change in the law applicable only to one case would raise separation-of-powers concerns, this case would not be an appropriate vehicle to consider such concerns. Section 8772 pertains to the rules governing execution against a foreign state's property in satisfaction of a judgment against the foreign state. Claims against foreign sovereigns have long been uniquely subject to changes in law and other actions by the political Branches, including changes that could affect a single case. In *Republic of Austria* v. *Altmann*, 541 U.S. 677, 689 (2004), this Court explained that a foreign state's immunity is not a constitutional requirement. Immunity determinations were historically made by the Executive on a case-by-case basis, and the courts "deferr[ed] to the decisions of the political branches" on "whether to take jurisdiction" in a particular case. *Id.* at 696 (citation and internal quotation marks omitted); cf. *Roeder* v. *Islamic Repub. of Iran*, 333 F.3d 228, 235 (D.C. Cir. 2003) (discussing statutory amendment that "created an exception, for this case alone, to Iran's sovereign immunity, which

would otherwise have barred the action"), cert. denied, 542 U.S. 915 (2004). In addition, it is well-established that the President and Congress, in the exercise of their foreign-relations authority, may settle or extinguish particular pending claims against a foreign state or its nationals. *Dames & Moore* v. *Regan*, 453 U.S. 654, 679 (1981); *American Ins. Ass'n* v. *Garamendi*, 539 U.S. 396, 415-416 (2003); *Medellín* v. *Texas*, 552 U.S. 491, 531 (2008). Congress has also enacted various blocking statutes that enable the President to block foreign-state assets when doing so is in the interests of the United States. *Dames & Moore*, 453 U.S. at 673; see p. 3, *supra*. Any decision to block particular assets, and to assert extensive control over them through licensing or other measures, could have a dispositive impact on one (or more) pending cases against a foreign state. This case thus involves not only the power of Congress and the President to alter the governing law applicable to pending suits, but in addition the broad powers of the political Branches to regulate with respect to the disposition of the *assets* of a foreign state. Section 8772 represents an exercise of the political Branches' broad powers over foreign relations, national security, and foreign commerce, and *Klein* furnishes no basis for invalidating Congress's judgment that the assets at issue here may properly be made available to pay terrorism judgments against Iran.[3]

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[3] Relatedly, petitioner is incorrect in arguing that this case is a good vehicle for considering *Klein*'s application because it "involves paradigmatic private rights" in an action "at common law for damages." Pet. 32 (citation omitted). A suit against a foreign state does not involve "paradigmatic private rights" because there was no action at common law for damages against foreign states,

II. THIS COURT'S REVIEW IS NOT WARRANTED

A. The Decision Below Does Not Conflict With Decisions Of Other Courts Of Appeals

Petitioner has identified no disagreement among the circuits on the question presented. See Pet. 23 (urging the Court to grant certiorari "even absent a clear circuit conflict"); Pet. Reply Br. 5 (same). The courts of appeals have consistently declined to find statutes unconstitutional on *Klein* grounds. See *Janko* v. *Gates*, 741 F.3d 136, 146 (D.C. Cir. 2014) (*Klein* does not apply to case that was not pending when the statute was enacted.), cert. denied, 135 S. Ct. 1530 (2015); *Biodiversity Assocs.* v. *Cables*, 357 F.3d 1152, 1171 (10th Cir. 2004) (*Klein* did not apply because statute amended applicable law.), cert. denied, 543 U.S. 817 (2004); *National Coal. to Save Our Mall*, 269 F.3d at 1097 (statute changing law with respect to a specific memorial was constitutional); *Lindh* v. *Murphy*, 96 F.3d 856, 872 (7th Cir. 1996) (en banc) (discussing *Klein* rule in rejecting argument that Congress may not provide for deferential habeas review of state convictions), rev'd on other grounds, 521 U.S. 320 (1997). And while, as petitioner argues (Pet. 18), some courts have observed that *Klein* is "difficult * * * to interpret," *Biodiversity Assocs.*, 357 F.3d at 1170, they have concluded, like the decision below, that a statute that amends the law applicable to a pending case presents no problem under *Klein*, see *id.* at 1171. Because Section 8772 clearly

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which historically were absolutely immune from suit. See, *e.g.*, *Alfred Dunhill of London, Inc.* v. *Republic of Cuba*, 425 U.S. 682, 698 (1976).

amends existing law, this case presents no occasion to resolve any confusion about *Klein*'s outer bounds.

B. Any International Ramifications Of The Court Of Appeals' Decision Do Not Warrant This Court's Review

Petitioner argues (Pet. 25-31) that review is warranted because the court of appeals' decision has "important international ramifications." Pet. 25 (capitalization altered). The Second Circuit's decision does not have the consequences petitioner attributes to it.

1. Petitioner argues (Pet. 25-27) that Section 8772 violates Article IV.1 of the Treaty of Amity between the United States and Iran, which requires the parties to "accord fair and equitable treatment" to each other's "nationals and companies." Treaty of Amity art. IV.1. Petitioner also argues in passing (Pet. 26 n.3) that the statute violates Article III.1 of the Treaty of Amity, which requires each state to "recognize[]" the "juridical status" of "[c]ompanies" of the other state. Treaty of Amity art. III.1. Contrary to petitioner's argument, the Treaty is not implicated here because petitioner is not a "national" or "compan[y]" within the meaning of the Treaty.

Petitioner is not a "national" of Iran as that term is used in the Treaty. The context makes clear that the term includes only natural persons. For instance, Article II.2(a) grants a "national[]" the right to travel and reside at a place of the national's choice; Article II.4 grants nationals the right to "humane treatment" when taken "in[to] custody"; and Article II.1 governs the right of nationals to "enter and remain in the territories" of the parties. Those provisions make sense only if they are understood to refer exclusively to natural persons.

Nor is petitioner a "compan[y]" within the meaning of the Treaty. The term "companies" is defined as "corporations, partnerships, companies and other associations, whether or not with limited liability and whether or not for pecuniary profit." Treaty of Amity art. III.1. That definition—which does not include any reference to government agencies and instrumentalities—is not naturally read to include entities like petitioner. The central bank of Iran is an agency of the state that carries out sovereign functions. See The Monetary and Banking Law of July 9, 1972 (Iran), Arts. 10-11, www.cbi.ir/page/2234.aspx (petitioner is responsible for, among other things, issuing currency, formulating regulations pertaining to foreign exchange transactions, and stabilizing the national currency); Central Bank of the Islamic Republic of Iran, *General Information*, www.cbi.ir/page/General Information.aspx (last visited Aug. 18, 2015); see also Pet. 7 ("Like other central banks, [petitioner] holds foreign currency reserves to carry out monetary policies such as maintaining price stability."). Had the treaty parties intended provisions guaranteeing fair treatment to "companies" to apply as well to governmental agencies executing functions on behalf of the sovereign, they would have expressly so provided.

Other provisions of the Treaty of Amity confirm that the term "companies" does not include entities like petitioner. Article XI.4 refers to "government agencies and instrumentalities" as distinct from "corporations" and "associations." Treaty of Amity art. XI.4. And when the Treaty of Amity refers to entities controlled or owned by the sovereign or to sovereign agencies or instrumentalities, it does so expressly, referring to "enterprises owned or controlled by [the]

Government" or "government agencies and instrumentalities." *Id.* arts. XI.1, XI.4.

2. Petitioner's remaining arguments also lack merit.

Petitioner contends (Pet. 27-29) that Section 8772 "undermines" the President's ability to conduct foreign affairs because it limits his statutory authority to dispose of blocked assets. Petitioner does not argue that Section 8772 unconstitutionally impinges on any exclusive presidential power. Cf. *Zivotofsky* v. *Kerry*, 135 S. Ct. 2076, 2083-2084 (2015). Instead, petitioner suggests that the President might prefer to dispose of the blocked assets in some way other than that required by Section 8772. Pet. 28-29. Such speculation does not militate in favor of this Court's review of the *Klein* question presented by the petition.

Finally, petitioner argues (Pet. 29-31) that the court of appeals' decision undermines confidence in U.S. financial markets and invites retaliation by foreign governments. But Section 8772 is a narrowly tailored provision that Congress enacted to permit execution on a terrorism judgment against the assets beneficially owned by the central bank of a state sponsor of terrorism—assets that were being held in the United States in violation of U.S. sanctions laws and regulations. See p. 2, *supra*. In the view of the United States, the law-abiding members of the international community should not find such legislation cause for alarm.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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